



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ADMINISTRATION  
AND RESOURCES  
MANAGEMENT

9 May 2002

***Certified Mail/Return Receipt Requested***

Mr. Kesavalu M. Bagawandoss  
Laboratory Manager  
American Analytical and Technical Services, Inc.  
11950 Industriplex Blvd.  
Baton Rouge, Louisiana 70809

Subject: Agency-Level Protest of Solicitation # PR-HQ-02-10028

Dear Mr. Bagawandoss:

This letter is in response to your Agency-level protest dated April 19, 2002, submitted on behalf of American Analytical and Technical Services, Inc. (AATS). Your protest contains two allegations. Specifically,

- 1) the Agency has improperly included price as a factor in the Performance Scheduling Algorithm (PSA); and
- 2) the subject solicitation applies the Service Contract Act of 1965 (SCA), yet does not distribute samples equitably.

The following discussion responds, in order, to each of your allegations.

AATS's first basis of protest essentially alleges that the Agency should not use price as a factor in deciding how samples are distributed among contractors, and that samples should be equally distributed among contractors as long as contractor performance is acceptable. AATS cites GAO protest B-282277.3 as evidence to support its allegation.

AATS's reliance on the referenced GAO protest is misplaced. The referenced GAO protest deals with equal treatment of bidders before contract award, while the use of the PSA does not commence until after contract award. Moreover, as stated in the MINIMUM AND MAXIMUM AMOUNTS clause, the Government only guarantees orders totaling a minimum of \$10,000 to each contractor during each option period. For orders beyond the guaranteed minimum amount, the PSA will be used to determine which contractors will receive the orders. Pursuant to FAR 16.505 (b)(1)(ii)(E), the contracting officer **MUST** (emphasis added) consider price or cost under each multiple contracts award order as one of the factors in the selection decision.

AATS's second basis of protest alleges that the subject solicitation applies the SCA, yet does not distribute samples equitably. FAR 22.1002 states that, pursuant to the SCA, service contracts over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. The SCA addresses these mandatory provisions, not the placement of orders under multiple award contracts.

Therefore, based on my review, I have determined that the Agency has properly included price as a factor in the PSA, and properly applied the SCA. Please note that you have the right to request a review of this decision by the Head of the Contracting Activity. You may do so by sending a written request within ten (10) calendar days of receipt of this letter to:

Judy S. Davis  
Director, Office of Acquisition Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Mail Code 3801R  
Washington, DC 20460

Thank you for your interest in doing business with EPA.

Sincerely,

/s/

Thomas Valentino  
Contracting Officer